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By Fax (2801 6314) and By Post

1 November 2004

Dear Mr Au,

Vocational Training Council (Amendment) Bill 2004

Thank you for your letter of 30 October 2004 and the proposed revised Bill. I would be pleased if you could provide further clarification on the issues contained in the enclosed paper.

I look forward to your reply in bilingual form on or before 3 November 2004.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

Encl

c.c. LA
CCS(2)1

Vocational Training Council (Amendment) Bill 2004

Objects and powers of a statutory corporation - The Vocational Training Council Ordinance (Cap. 1130)

The objects of a statutory corporation state the purposes for which it is formed and are usually provided in the legislation which creates the corporation. In the case of the Vocational Training Council Ordinance (Cap. 1130) (“VTCO”), the objects of the Vocational Training Council (“VTC”) are provided in section 5 as follows-

“5. Objects of the Council

- (a) to advise the Chief Executive on the measures required to ensure a comprehensive system of technical education and industrial training suited to the developing needs of Hong Kong;
- (b) to institute, develop and operate schemes for training operatives, craftsmen, technicians and technologists needed to sustain and improve industry;
- (c) to promote the training of apprentices;
- (d) to provide and co-ordinate the provision of skills training to disabled persons aged 15 and over for the purpose of improving their employment prospects and preparing them for open employment; and
- (e) to establish, operate and maintain technical colleges, technical institutes, industrial training centres and skills centres.”

2. Section 6 of VTCO provides for the functions of VTC. The section contains 2 parts: section 6(1) provides for the obligations or duties of VTC and section 6(2) provides for the powers of VTC. The Bill seeks to give additional powers to VTC by amending section 6.

3. The general principle in law is that if any transaction is beyond the scope of the constitution (which provides for the objects) of the corporation, it is ultra vires and void *ab initio*.

4. The powers of a corporation created by statute are limited and extend no further than what is necessarily and properly required for carrying into effect the purposes of its incorporation.

5. The law regarding the limitation of the powers of statutory corporations

is succinctly set out in *Halsbury's Law of England* (4th ed.) as follows-

“Special powers given either to directors or to a majority of a corporation by its constitution, whether statutory or otherwise, however absolute in terms, are always to be construed as subject to a paramount and inherent restriction that they are to be exercised *in subjection to the special purposes of the original bond of association.*” (para.1141, vol. 9(2))

“The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it, and extend no further than is expressly stated therein, or is *necessarily and properly required for carrying into effect the purposes of its incorporation*, or may be fairly regarded as incidental to, or consequential on, those things which the legislation has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited.” (para. 1137, vol. 9(2))

6. The Bill seeks to empower VTC to provide skills training and skills certification programmes to people including non-Hong Kong persons outside Hong Kong.

7. Does section 5 of VTCO intend to establish VTC with the purpose of, amongst other things, providing skills training for the benefit of non-Hong Kong persons? In other words, is the extension of a power to provide skills training and skills certification programmes to non-Hong Kong persons outside Hong Kong necessarily and properly required for carrying into effect the purposes of the incorporation of VTC, or may be fairly regarded as incidental to, or consequential on, those things which VTCO has authorised?

8. With a view to avoiding any possible ambiguity, would the Administration consider, to review and/or make amendments to the objects clause (section 5) of VTCO?

Express powers to take part in joint venture and corporate dealings

9. The Bill seeks to empower VTC “to extend the territorial coverage of its objects and functions, both on its own and in partnership with its counterparts across the border” (para. 4 of LegCo Brief). Please identify the provision(s) in VTCO or the Bill which permits VTC to participate in partnership, corporate holding, joint venture or other legal arrangements and to carry out activities either on its own or with outside parties through these vehicle(s).

10. As you may recall, in 1994, the Administration introduced 3 bills (Ord. No. 92, 93 and 94 of 1994) to provide express powers to the City University of Hong Kong, the Hong Kong Baptist University and the Hong Kong Polytechnic University to enable these educational institutions to carry out activities involving dealings in

corporate holdings and joint venture projects. Relevant sections of these legislation are copied and enclosed herewith for your easy reference (Appendix).

11. Educational institutions in Hong Kong often engage in undertakings, either on their own or jointly with other entities, which are incidental to their objects. These undertakings are sometimes operated through separate legal entities or subsidiaries, e.g. HKU School of Professional and Continuing Education (“SPACE”) (a company incorporated under the Companies Ordinance (Cap. 32) and limited by guarantee), the Hong Kong Institute of Biotechnology Limited operated by the Chinese University of Hong Kong, the CityU Enterprises Limited operated by the City University of Hong Kong.

12. Please advise whether similar legal arrangements will be made by VTC in carrying out the proposed extra-territorial activities.

Outside parties and VTC’s legal liabilities

13. According to the Administration, most of the extra-territorial activities will be run on a self-financing basis and the Administration will continue to ensure that there is no cross-subsidisation of these self-financed activities by government subvention to VTC (para. 7 of LegCo Brief).

14. Under the proposed arrangements in the Bill, should liabilities be incurred by VTC (e.g. financial, contractual or tortious liabilities), would the outside parties concerned be able to enforce against VTC?

Meaning of “Government” and “subsidy provided by the Government”

15. Section 6(4) of the Bill (as revised) reads as follows-

“(4) If the Council performs any of its functions outside Hong Kong for the training or education of persons other than Hong Kong persons, no subsidy shall be made available by the Government towards the performance of such functions and no subsidy provided by the Government for the Council shall be used to subsidize such function.”

16. Please explain the meaning of “Government” and “subsidy provided by the Government for the Council” and identify the source of such Government subsidy.

- “副監督”(Pro-Chancellor)指根據第 4(4) 條委任的大學副監督，並包括署理副監督職位的人；
- “常務副校長”(Deputy President)指根據第 14 條委任的大學常務副校長，並包括署理常務副校長職位的人；(由 2002 年第 23 號第 68 條修訂)
- “教務會”(Senate)指根據第 17 條設立的大學教務會；
- “規程”(statutes)指校董會根據第 21A 條訂立的大學規程；
- “評議會”(Convocation)指根據第 17B 條設立的大學評議會；
- “監督”(Chancellor)指根據第 4 條設立的大學監督，並包括署理監督職位的人；
- “學院”(faculty)指根據第 17A 條設立的大學學院，並包括根據該條設立的同等機構；
- “顧問委員會”(Court)指根據第 8A 條設立的大學顧問委員會。
(由 1994 年第 92 號第 4 條代替。由 2002 年第 23 號第 68 條修訂)

第 II 部

城市大學

(由 1994 年第 92 號第 5 條修訂)

3. 大學的設立、成立為法團及宗旨

(1) 現設立一個名為香港城市大學 (City University of Hong Kong) 的法團，該法團是一個以該名稱成立的永久延續的法人團體，可起訴與被起訴。

(2) 在符合本條例的規定下，大學的宗旨是提供科技、工程、理科、商科、文科及其他學科的研修、訓練、研究及發展。

(由 1994 年第 92 號第 6 條修訂)

4. 監督

(1) 大學設有監督，監督為大學的首長。

(2) 監督由行政長官出任。(由 2000 年第 53 號第 3 條修訂)

- “Deputy President” (常務副校長) means the Deputy President of the University appointed under section 14 and includes a person acting as the Deputy President; (Added 23 of 2002 s. 68)
- “faculty” (學院) means a faculty of the University established under section 17A and includes an equivalent body established under that section;
- “President” (校長) means the President of the University appointed under section 14 and includes a person acting as the President; (Added 23 of 2002 s. 68)
- “Pro-Chancellor” (副監督) means the Pro-Chancellor of the University appointed under section 4(4) and includes a person acting as the Pro-Chancellor;
- “Senate” (教務會) means the Senate of the University established by section 17;
- “statutes” (規程) means the statutes of the University made by the Council under section 21A;
- “University” (大學) means the City University of Hong Kong established by section 3;
- “Vice-President” (副校長) means the Vice-President of the University appointed under section 14(1)(c) and includes a person acting as a Vice-President. (Added 23 of 2002 s. 68)
- (Replaced 92 of 1994 s. 4. Amended 23 of 2002 s. 68)

PART II

THE CITY UNIVERSITY

(Amended 92 of 1994 s. 5)

3. Establishment, incorporation and objects of the University

(1) There is hereby established a corporation to be known as the City University of Hong Kong (香港城市大學), which shall, in that name, be a body corporate with perpetual succession and be capable of suing and being sued.

(2) The objects of the University shall, subject to this Ordinance, be to provide for studies, training and research and development in technology, engineering, science, commerce, arts and other subjects of learning.

(Amended 92 of 1994 s. 6)

4. Chancellor

(1) There is a Chancellor of the University who is the head of the University.

(2) The Chief Executive is the Chancellor. (Amended 53 of 2000 s. 3)

- (3) 監督可以大學的名義頒授學位及其他學術名銜，包括榮譽學位及榮譽名銜。
(由 2002 年第 23 號第 69 條修訂)
- (4) 監督可根據校董會的推薦而委任一人為副監督，任期由監督決定。
- (5) 副監督經監督授權，可行使監督的權力和執行監督的職責。
(由 1994 年第 92 號第 7 條代替)

5. 大學印章

- 大學須備有一個法團印章，加蓋印章須—— (由 1994 年第 92 號第 8 條修訂)
- (a) 由校董會藉決議授權或追認；及
- (b) 由任何 2 名獲校董會一般授權或特別授權作簽署認證的校董會成員簽署認證。

6. 大學的文件

- (1) 大學可在執行其職能或行使其權力時或就執行其職能或行使其權力所合理附帶或相應引起的任何事宜，訂立與簽立任何文件。
- (2) 任何看來是經蓋上大學印章而妥為簽立的文件，須獲接納為證據，而且除非相反證明成立，否則須當作已妥為簽立。
(由 1994 年第 92 號第 9 條修訂)

7. 大學的權力

- 在符合第 8 條的規定下，大學有權為貫徹執行其職能而作出一切所需或所附帶的事情，或作出一切有助於貫徹執行其職能或與該目的相關的事情，並在不損害前述條文的一般性的原則下，尤可—— (由 1994 年第 92 號第 10 條修訂)
- (a) 取得、承租、購買、持有和享有任何種類的財產，以及出售、出租或以其他方式處置或處理該等財產，其方式及範圍為假使該等財產是由一名自然人按與大學相同的權益持有時法律所容許者；
- (aa) 頒授學位及學術名銜，包括榮譽學位及榮譽名銜； (由 1994 年第 92 號第 10 條增補)

- (3) The Chancellor may confer degrees and other academic awards in the name of the University including honorary degrees and honorary awards. (Amended 23 of 2002 s. 69)
- (4) The Chancellor may, on the recommendation of the Council, appoint a person to be the Pro-Chancellor for a term to be determined by the Chancellor.
- (5) The Pro-Chancellor may with the authority of the Chancellor exercise the powers and perform the duties of the Chancellor. (Replaced 92 of 1994 s. 7)

5. Seal of the University

- The University shall have a common seal, and the affixing of the seal shall— (Amended 92 of 1994 s. 8)
- (a) be authorized or ratified by resolution of the Council; and
- (b) be authenticated by the signature of any 2 members of the Council, authorized by the Council either generally or specially to act for that purpose.

6. Documents of the University

- (1) The University may make and execute any document in the performance or exercise of its functions or powers or in connexion with any matter reasonably incidental to or consequential upon the performance or exercise of its functions or powers.
- (2) Any document purporting to be duly executed under the seal of the University shall be admitted in evidence and shall, unless the contrary is proved, be deemed to have been duly executed. (Amended 92 of 1994 s. 9)



7. The powers of the University

- Subject to section 8, the University shall have power to do all such things as are necessary for, or incidental or conducive to, or connected with, the furtherance of its functions and may in particular, but without prejudice to the generality of the foregoing— (Amended 92 of 1994 s. 10)
- (a) acquire, take on lease, purchase, hold and enjoy property of any description and sell, let or otherwise dispose of or deal with the same in such manner and to such extent as the law would allow if the property were held by a natural person in the same interest;
- (aa) confer degrees and academic awards including honorary degrees and honorary awards; (Added 92 of 1994 s. 10)

- (b) (由 1994 年第 92 號第 10 條廢除)
- (c) 建造、提供、裝備、保養、改動、移去、拆卸、更換、擴大、改善、維修與規管建築物、處所、家具及設備，以及所有其他財產；
- (d) 訂定教職員的薪酬條款及服務條件；
- (e) (由 1994 年第 92 號第 10 條廢除)
- (f) 為其學生及大學僱用的人提供合適的適意設備(包括住宿安排、社交及康體活動所需的設施)；
- (g) 收取與動用資金；
- (h) 以其認為需要或合宜的方式及規模，將大學的資金用於投資；
- (i) 以其認為合宜的方式，並以其認為合宜的保證或條款借入款項；
- (j) 為執行其職能而以其認為適當的條件申請與接受任何資助；
- (k) 聘請專業人士或專家就任何事宜向大學提供意見；
- (l) 就大學所提供的科目、設施及其他服務釐定與收取費用，並指明使用該等設施及服務的條件；(由 2002 年第 23 號第 70 條修訂)
- (m) 在一般情況下或就任何個別情況或類別的情況減收、免收或退還上述所釐定的費用；
- (n) 不論是以信託方式或其他方式，以大學名義接受與徵求饋贈，以及擔任以信託方式歸屬大學的款項或其他財產的受託人；
- (o) (由 1994 年第 92 號第 10 條廢除)
- (p) 僱用全職或非全職的教職員、顧問及專家顧問；(由 1994 年第 92 號第 10 條增補)
- (q) 以補助或貸款方式提供經濟援助以貫徹其宗旨；(由 1994 年第 92 號第 10 條增補)
- (r) 與他人訂立合約、成立合夥或其他形式的聯營關係；(由 1994 年第 92 號第 10 條增補)
- (s) 取得、持有與處置在其他法人團體內的權益，以及參與成立法人團體；(由 1994 年第 92 號第 10 條增補)
- (t) 提供諮詢、顧問、研究及其他有關服務，不論是否為了牟利。(由 1994 年第 92 號第 10 條增補)

8. (由 1994 年第 92 號第 11 條廢除)

- (b) (*Repealed 92 of 1994 s. 10*)
- (c) erect, provide, equip, maintain, alter, remove, demolish, replace, enlarge, improve, keep in repair and regulate the buildings, premises, furniture and equipment and all other property;
- (d) set terms of remuneration and conditions of service for staff;
- (e) (*Repealed 92 of 1994 s. 10*)
- (f) provide appropriate amenities (including residential accommodation, facilities for social activities and physical recreation) for its students and persons in its employment;
- (g) receive and expend funds;
- (h) invest its funds in such manner and to such extent as it thinks necessary or expedient;
- (i) borrow money in such manner and on such securities or terms as it thinks expedient;
- (j) apply for and receive any grant in aid for its functions on such conditions as it thinks fit;
- (k) engage any professional or expert person to advise it on any matter;
- (l) fix and collect fees and charges for courses of study, facilities and other services provided by it and specify conditions for the use of such facilities and services;
- (m) reduce, waive or refund fees and charges so fixed generally or in any particular case or class of case;
- (n) receive and solicit gifts, whether on trust or otherwise, on its behalf and act as trustee of moneys or other property vested in it on trust;
- (o) (*Repealed 92 of 1994 s. 10*)
- (p) employ staff, advisers and consultants, on a full time or part time basis; (*Added 92 of 1994 s. 10*)
- (q) provide financial assistance by way of grant or loan in pursuance of its objects; (*Added 92 of 1994 s. 10*)
- (r) enter into a contract, partnership or other form of joint venture with other persons; (*Added 92 of 1994 s. 10*)
- (s) acquire, hold and dispose of interests in other corporate bodies and take part in forming corporate bodies; (*Added 92 of 1994 s. 10*)
- (t) provide for profit or otherwise advisory, consultancy, research and other related services. (*Added 92 of 1994 s. 10*)

8. (*Repealed 92 of 1994 s. 11*)

第 II 部

大學

(由 1994 年第 93 號第 6 條修訂)

3. 大學成立為法團及其宗旨

(1) 香港浸會大學 (Hong Kong Baptist University) 是一個以該名稱成立的永久延續的法人團體，可起訴與被起訴。

(2) 在符合本條例的規定下，大學的宗旨是提供理科、商科、社會科學學科、文科及其他學科的研修、訓練及研究。

(由 1994 年第 93 號第 7 條修訂)

4. 監督

(1) 大學設有監督，由行政長官出任。(由 2000 年第 53 號第 3 條修訂)

(2) 監督可以大學的名義頒授學位及其他學術名銜。

(由 1994 年第 93 號第 8 條代替)

5. 大學印章

大學須備有一個法團印章，加蓋印章須——

(a) 由校董會藉決議授權或追認；及

(b) 由以下的人簽署認認——

(i) 校長或任何副校長；及

(ii) 一名獲校董會一般授權或特別授權作簽署認認的校董會成員。

(由 1994 年第 93 號第 9 條修訂)

6. 大學的文件

(1) 大學可在執行其職能或行使其權力時或就執行其職能或行使其權力所合理附帶或相應引起的任何事宜，訂立與簽立任何文件。

PART II

THE UNIVERSITY

(Amended 93 of 1994 s. 6)



3. Incorporation and objects of the University

(1) The Hong Kong Baptist University (香港浸會大學) shall in that name be a body corporate with perpetual succession and be capable of suing and being sued.

(2) The objects of the University shall, subject to this Ordinance, be to provide for studies, training and research in science, commerce, social science, arts and other subjects of learning.

(Amended 93 of 1994 s. 7)

4. Chancellor

(1) There is a Chancellor of the University who is the Chief Executive. (Amended 53 of 2000 s. 3)

(2) The Chancellor may confer degrees and other academic awards in the name of the University.

(Replaced 93 of 1994 s. 8)

5. Seal of the University

The University shall have a common seal, and the affixing of the seal shall—

(a) be authorized or ratified by resolution of the Council; and

(b) be authenticated—

(i) by the signature of the President and Vice-Chancellor or of any Vice-President; and

(ii) by the signature of 1 member of the Council, authorized by the Council either generally or specially to act for that purpose.

(Amended 93 of 1994 s. 9)

6. Documents of the University

(1) The University may make and execute any document in the performance or exercise of its functions or powers or in connexion with any matter reasonably incidental to or consequential upon the performance or exercise of its functions or powers.

(2) 任何看來是經蓋上大學印章而妥為簽立的文件，須獲接納為證據；而且除非相反證明成立，否則須當作已妥為簽立。

(由 1994 年第 93 號第 10 條修訂)

7. 大學的權力

在符合第 8 條的規定下，大學有權為貫徹執行其職能而作出一切所需或所附帶的事情，或作出一切有助於貫徹執行其職能或與該目的相關的事情，並在不損害前述條文的一般性的原則下，尤可—— (由 1994 年第 93 號第 11 條修訂)

- (a) 取得、承租、購買、持有和享有任何種類的財產，以及出售、出租或以其他方式處置或處理該等財產，其方式及範圍為假使該等財產是由一名自然人按與大學相同的權益持有時法律所容許者；
- (b) 訂立任何合約；
- (c) 建造、提供、裝備、保養、改動、移去、拆卸、更換、擴大、改善、維修與規管其建築物、處所、家具及設備以及其他財產；
- (d) 訂定教職員的薪酬條款及服務條件；
- (e) 聘請非全職人員；
- (f) 為其學生及大學僱用的人提供合適的適意設備(包括住宿安排、社交及康體活動所需的設施)；
- (g) 收取與動用資金；
- (h) 以其認為需要或合宜的方式及規模，將大學的資金用於投資；
- (i) 以其認為合宜的方式，並以其認為合宜的保證或條款借入款項；
- (j) 為執行其職能而以其認為適當的條件申請與接受任何資助；
- (k) 聘請專業人士或專家就任何事宜向大學提供意見；
- (l) 就大學所提供的課程、設施及其他服務釐定與收取費用，並指明使用該等設施及服務的條件；
- (m) 在一般情況下或就任何個別情況或類別的情況減收、免收或退還上述所釐定的費用；
- (n) 不論是以信託方式或其他方式，以大學名義接受與徵求饋贈，以及擔任以信託方式歸屬大學的款項或其他財產的受託人；

(2) Any document purporting to be duly executed under the seal of the University shall be admitted in evidence and shall, unless the contrary is proved, be deemed to have been duly executed.

(Amended 93 of 1994 s. 10)



7. The powers of the University

Subject to section 8, the University shall have power to do all such things as are necessary for, or incidental or conducive to, or connected with, the furtherance of its functions and may in particular, but without prejudice to the generality of the foregoing— (Amended 93 of 1994 s. 11)

- (a) acquire, take on lease, purchase, hold and enjoy property of any description and sell, let or otherwise dispose of or deal with the same in such manner and to such extent as the law would allow if the property were held by a natural person in the same interest;
- (b) enter into any contract;
- (c) erect, provide, equip, maintain, alter, remove, demolish, replace, enlarge, improve, keep in repair and regulate its buildings, premises, furniture and equipment and other property;
- (d) set terms of remuneration and conditions of service for staff;
- (e) engage persons on a part-time basis;
- (f) provide appropriate amenities (including residential accommodation, facilities for social activities and physical recreation) for its students and persons in its employment;
- (g) receive and expend funds;
- (h) invest its funds in such manner and to such extent as it thinks necessary or expedient;
- (i) borrow money in such manner and on such securities or terms as it thinks expedient;
- (j) apply for and receive any grant in aid for its functions on such conditions as it thinks fit;
- (k) engage any professional or expert person to advise it on any matter;
- (l) fix and collect fees and charges for courses of study, facilities and other services provided by it and specify conditions for the use of such facilities and services;
- (m) reduce, waive or refund fees and charges so fixed generally or in any particular case or class of case;
- (n) receive and solicit gifts, whether on trust or otherwise, on its behalf and act as trustee of moneys or other property vested in it on trust;

- (o) 頒授學位及學術名銜，包括榮譽學位及榮譽名銜； (由 1988 年第 40 號第 2 條代替)
- (p) 取得、持有與處置在其他法人團體內的權益，以及成立或參與成立法人團體； (由 1994 年第 93 號第 11 條增補)
- (q) 提供諮詢、顧問、研究及其他有關服務，不論是否為了牟利； (由 1994 年第 93 號第 11 條增補)
- (r) 按大學認為合適或合宜而印刷、製作或出版任何手稿、書籍、戲劇、音樂、劇本、節目或其他材料，包括影音材料及電腦軟件。 (由 1994 年第 93 號第 11 條增補)

8. (由 1994 年第 93 號第 12 條廢除)

第 III 部

諮議會

(由 1994 年第 93 號第 13 條修訂)

9. 諮議會的設立

- (1) 現設立諮議會，名為香港浸會大學諮議會。
- (2) 諮議會是大學的最高諮詢機構。

(由 1994 年第 93 號第 14 條修訂)

10-11. (由 1994 年第 93 號第 15 條廢除)

12. 諮議會的職能

諮議會具有以下職能——

- (a) 收取校長的周年報告；
- (b) 審議校董會向其作出的報告；
- (c) 討論任何關於大學整體政策的動議；
- (d) 應大學要求籌集資金以貫徹大學的宗旨；及
- (e) 促進大學在香港及其他地方的權益。

(由 1994 年第 93 號第 16 條代替)

13. (由 1994 年第 93 號第 17 條廢除)

- (o) confer degrees and academic awards including honorary degrees and honorary awards; (*Replaced 40 of 1988 s. 2*)
- (p) acquire, hold and dispose of interests in other corporate bodies and form or take part in forming corporate bodies; (*Added 93 of 1994 s. 11*)
- (q) provide for profit or otherwise advisory, consultancy, research and other related services; (*Added 93 of 1994 s. 11*)
- (r) print, produce or publish any manuscript, book, play, music, script, programme or other materials, including video and audio material and computer software as the University thinks appropriate or expedient. (*Added 93 of 1994 s. 11*)

8. (*Repealed 93 of 1994 s. 12*)

PART III

THE COURT

(*Amended 93 of 1994 s. 13*)

9. Establishment of the Court

(1) There is hereby established a Court to be known as the Court of the Hong Kong Baptist University.

(2) The Court shall be the supreme advisory body of the University. (*Amended 93 of 1994 s. 14*)

10-11. (*Repealed 93 of 1994 s. 15*)

12. Functions of the Court

The Court has the following functions—

- (a) to receive an annual report from the President and Vice-Chancellor;
- (b) to consider reports made to it by the Council;
- (c) to discuss any motion on general University policy;
- (d) to raise funds at the request of the University to further the University's objects; and
- (e) to promote the interests of the University in Hong Kong and elsewhere.

(*Replaced 93 of 1994 s. 16*)

13. (*Repealed 93 of 1994 s. 17*)

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“教務委員會”(Senate)指根據第 8A 條設立的大學教務委員會。(由 1994 年第 94 號第 4 條增補)

(由 1978 年第 5 號第 2 條代替。由 1994 年第 94 號第 4 條修訂)

3. 大學的設立及宗旨

(1) 現設立香港理工大學(The Hong Kong Polytechnic University)為一個永久延續的法人團體，該法人團體可以其名義起訴與被起訴。

(2) 大學有能力作出亦有能力准許法人團體可合法作出或准許的作為及事情。

(3) 大學的宗旨是提供科技、理科、商科、文科及其他學科的研修、訓練及研究。

(由 1994 年第 94 號第 5 條代替)

3A. 大學的主管人員

(1) 大學的主管人員為當其時出任以下職位的人(此等職位現構成大學的主管職位)——

- (a) 大學校監；
- (b) 校董會主席；
- (c) 校董會副主席；
- (d) 大學司庫；
- (e) 大學校長；及
- (f) 大學常務副校長。

(2) 大學校監由行政長官出任。如行政長官缺席，則由依照《基本法》第五十三條在當其時代理行政長官職務的人出任署理校監，署理校監在署理校監職位期間具有校監的權力及職責。(由 1994 年第 94 號第 6 條代替。由 2000 年第 53 號第 3 條修訂)

(2A) 校監可以大學的名義頒授學位及學術名銜，包括榮譽學位及榮譽名銜。如校監缺席，則主席可以大學的名義頒授學位及學術名銜，包括榮譽學位及榮譽名銜。(由 1994 年第 94 號第 6 條增補)

(3) 大學司庫由行政長官從根據第 10(1)(d) 條獲委任的校董會成員中委出。(由 2000 年第 53 號第 3 條修訂)

(4) 校長及常務副校長(如有的話)的委任須按照第 8 條作出。

(由 1978 年第 5 號第 3 條增補。由 1994 年第 94 號第 6 條修訂)

“University”(大學) means The Hong Kong Polytechnic University established under section 3. (Added 94 of 1994 s. 4)

(Replaced 5 of 1978 s. 2. Amended 94 of 1994 s. 4)



3. Establishment and objects of the University

(1) There is established The Hong Kong Polytechnic University (香港理工大學) as a body corporate with perpetual succession and capable of suing and being sued in its name.

(2) The University is capable of doing and permitting the acts and things that a body corporate may lawfully do or permit.

(3) The objects of the University are to provide for studies, training and research in technology, science, commerce, arts and other subjects of learning.

(Replaced 94 of 1994 s. 5)

3A. Officers of the University

(1) The officers of the University shall be the persons for the time being holding any of the following offices hereby constituted as offices of the University—

- (a) the Chancellor of the University;
- (b) the Chairman of the Council;
- (c) the Deputy Chairman of the Council;
- (d) the Treasurer of the University;
- (e) the President of the University; and
- (f) the Deputy President of the University.

(2) The Chief Executive is the Chancellor of the University and in his absence, the person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law is the Acting Chancellor and has the powers and the duties of the Chancellor while acting. (Replaced 94 of 1994 s. 6. Amended 53 of 2000 s. 3)

(2A) The Chancellor may confer degrees and academic awards including honorary degrees and honorary awards in the name of the University and in the absence of the Chancellor, the Chairman may confer degrees and academic awards including honorary degrees and honorary awards in the name of the University. (Added 94 of 1994 s. 6)

(3) The Treasurer of the University shall be appointed by the Chief Executive from among the members of the Council appointed under section 10(1)(d). (Amended 53 of 2000 s. 3)

(4) The appointment of the President and of the Deputy President (if any) shall be in accordance with section 8.

(Added 5 of 1978 s. 3. Amended 94 of 1994 s. 6)

4. 未經授權而使用名稱

(1) 任何人不得組織——

- (a) 沒有經校董會授權而聲稱或看來是香港理工大學或大學的分支或與大學有關連的組織、機構或團體；或
- (b) 大學以外的以“The Hong Kong Polytechnic University”或“香港理工大學”命名的組織，或以任何語文中與“The Hong Kong Polytechnic University”的詞句非常相近的名稱命名的組織，而其目的乃在於誤導或欺騙他人者。

亦不得參與和該組織、機構或團體相關的工作或成為其成員。

(2) 任何人違反第(1)款，即屬犯罪，一經定罪，可處第1級罰款。

(由 1994 年第 94 號第 7 條代替)

5. 校董會的設立

現設立校董會，名為香港理工大學校董會，可行使賦予大學的權力，亦須執行委予大學的職責。

(由 1994 年第 94 號第 7 條代替)

5A. 大學的法團印章

大學的法團印章須依據校董會的決議而加蓋，加蓋印章須由 2 名獲校董會授權作簽署認證的校董會成員簽署認證，而其中一名成員不得為大學僱員。

(由 1994 年第 94 號第 7 條增補)

6. 校董會的權力

校董會為大學的管治及行政機構，有權為更有效地貫徹大學的宗旨而作出一切所需或所附帶的事情，或作出一切有助於貫徹其宗旨的事情，並在不損害前述條文的一般性的原則下，尤可—— (由 1978 年第 5 號第 4 條修訂)

- (a) 取得、承租、購買、持有和享有任何財產，以及出售、出租或以其他方式處置該等財產； (由 1974 年第 74 號第 3 條修訂)
- (b) 訂立任何合約；

4. Unauthorized use of name

(1) A person shall not form, or work in connection with or be a member of—

- (a) an organization, institution or body which, without the authority of the Council, claims or purports to be The Hong Kong Polytechnic University or a branch of or connected with the University; or
- (b) an organization, other than the University, which uses the title of “The Hong Kong Polytechnic University” or “香港理工大學” or any title in any language which so closely resembles the expression “The Hong Kong Polytechnic University” as to be calculated to mislead or deceive.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

(Replaced 94 of 1994 s. 7)

5. Establishment of Council

There is established a Council to be known as the Council of The Hong Kong Polytechnic University which may exercise the powers conferred and shall perform the duties imposed on the University.

(Replaced 94 of 1994 s. 7)

5A. Common seal of University

The common seal of the University shall be affixed pursuant to a resolution of the Council and the affixing of the seal authenticated by the signature of 2 members of the Council authorized by the Council to act for that purpose and one of whom shall not be an employee of the University.

(Added 94 of 1994 s. 7)



6. The powers of the Council

The Council shall be the governing and executive body of the University with power to do all such things as are necessary for, or incidental or conducive to, the better carrying out of the objects of the University and may in particular, but without prejudice to the generality of the foregoing— (Amended 5 of 1978 s. 4)

- (a) acquire, take on lease, purchase, hold and enjoy any property and sell, let or otherwise dispose of the same; (Amended 74 of 1974 s. 3)
- (b) enter into any contract;

- (c) 建造、提供、裝備、保養、維修與規管建築物、處所、家具及設備以及為進行大學的工作所需的一切其他設施；
 - (d) 為成員、大學僱用的人及學生提供合適的適意設備；
 - (e) 為大學僱用的人及學生提供住宿安排以及社交和體育設施；
 - (f) 批准大學動用資金以貫徹其宗旨；
 - (g) 以其認為需要或合宜的方式及規模，將大學的資金用於投資；
 - (h) 以其認為合宜的方式，並以其認為合宜的保證或條款（包括將大學的財產按揭）借入款項；
 - (i) 為執行其職能而以其認為適當的條件申請任何資助；
 - (j) 僱用專業人士或專家就其在本條例下的任何職能所引起或與該等職能相關的事宜向其提供意見；
 - (k) 接受與徵求饋贈，以及擔任以信託方式歸屬大學的款項及其他財產的受託人；（由 1994 年第 94 號第 8 條代替）
 - (l) 頒授學位及其他學術名銜，包括榮譽學位及榮譽名銜；（由 1994 年第 94 號第 8 條增補）
 - (m) 與他人訂立合約、成立合夥或其他形式的聯營關係；（由 1994 年第 94 號第 8 條增補）
 - (n) 取得、持有與處置在其他法人團體內的權益，以及參與成立法人團體；（由 1994 年第 94 號第 8 條增補）
 - (o) 提供諮詢、顧問、研究及其他有關服務，不論是否為了牟利。（由 1994 年第 94 號第 8 條增補）
- （由 1994 年第 94 號第 8 條修訂）

7. （由 1994 年第 94 號第 9 條廢除）

8. 校長及其他教職員的委任

- (1) 校董會—
 - (a) 須按照第 (2) 款委任一名校長，校長在校董會的管轄下，獲委負責大學的管理、運作及行政，以及學生在大學內的紀律事宜；

- (c) erect, provide, equip, maintain, keep in repair and regulate the buildings, premises, furniture and equipment and all other means necessary for carrying on the work of the University;
 - (d) provide appropriate amenities for members, persons in the employment of the University and students;
 - (e) provide residential accommodation and social and athletic facilities for persons in the employment of the University and students;
 - (f) approve the expenditure of the funds of the University in the furtherance of its objects; (*Amended L.N. 446 of 1994*)
 - (g) invest the funds of the University in such manner and to such extent as it thinks necessary or expedient;
 - (h) borrow money in such manner and on such securities or terms, including mortgaging the property of the University, as it thinks expedient;
 - (i) apply for any grant in aid for its functions on such conditions as it thinks fit;
 - (j) employ any professional or expert person to advise it on any matter arising out of or in connexion with any of its functions under this Ordinance;
 - (k) receive and solicit gifts and act as trustee of moneys and other property vested in the University on trust; (*Replaced 94 of 1994 s. 8*)
 - (l) confer degrees and other academic awards including honorary degrees and honorary awards; (*Added 94 of 1994 s. 8*)
 - (m) enter into a contract, partnership or other form of joint venture with other persons; (*Added 94 of 1994 s. 8*)
 - (n) acquire, hold and dispose of interests in other corporate bodies and take part in forming corporate bodies; (*Added 94 of 1994 s. 8*)
 - (o) provide for profit or otherwise advisory, consultancy, research and other related services. (*Added 94 of 1994 s. 8*)
- (*Amended 94 of 1994 s. 8*)

7. (*Repealed 94 of 1994 s. 9*)

8. Appointment of President and other staff

- (1) The Council—
 - (a) shall, in accordance with subsection (2), appoint a President in whom, subject to the control of the Council, shall be vested the management, conduct and administration of the University and the discipline of students therein;